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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEO LOUIE SANCHEZ,

Defendant and Appellant.

B285338

(Los Angeles County
Super. Ct. No. KA049830)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Leo Louie Sanchez appeals from an order denying his petitions for recall of sentence and resentencing under Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126).¹ On appeal, Sanchez contends there is no substantial evidence to support the trial court's finding that he would pose an unreasonable risk of danger to public safety if resentenced. We disagree and affirm.

BACKGROUND

I. The Commitment Offenses

On March 22, 2001, Sanchez was convicted of transportation, and possession and sale, of methamphetamine (Health & Saf. Code, §§ 11378, 11379, subd. (a)). Sanchez had been stopped by a sheriff's deputy for driving with his two small children unrestrained in the car. After Sanchez said he did not have a driver's license, the deputy ordered Sanchez out of the car. Sanchez attempted to remove a bag of methamphetamine from the car by dragging it out with his bare foot. When the deputy retrieved the bag, Sanchez fled, leaving the children behind in the car. Another deputy arrived at the scene and found more methamphetamine near the car. A search of Sanchez's residence revealed a commercial drug enterprise. Following Sanchez's conviction, the trial court refused to strike three of Sanchez's four prior strike convictions and sentence him as a second strike

¹ Sanchez also orally petitioned for relief under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18). The trial court dismissed that petition on the ground Sanchez was ineligible for relief under Proposition 47.

offender.² It sentenced him to 25 years to life under the three strikes law. We affirmed. (*People v. Sanchez* (Mar. 5, 2002, B149912) [nonpub. opn.].)

II. The Proposition 36 Petition

On March 22, 2013, Sanchez filed his petition for recall of sentence and resentencing under Proposition 36. He claimed eligibility for recall of sentence, and his suitability for resentencing because he would not pose an unreasonable risk of danger to public safety if resentenced (Pen. Code, § 1170.126, subd. (f)).

The People filed opposition to Sanchez’s petition on October 17, 2013. They did not challenge his claim of eligibility but challenged his suitability. The People quoted our opinion holding the trial court had not abused its discretion in refusing to strike any of Sanchez’s prior convictions, in that nothing in the record put Sanchez outside the spirit of the three strikes law’s sentencing scheme. We stated that Sanchez had “amassed an impressive criminal record.” In 1986, Sanchez was convicted of armed robbery. That court showed him “remarkable mercy,” placing him on probation with 270 days in jail. He soon violated probation in 1987 by trying to dissuade a witness via threats of force and went to prison for both crimes. In the meantime, he suffered convictions for a misdemeanor battery and a misdemeanor burglary. He spent short periods of time in jail for each conviction.

² These were a 1986 robbery conviction (Pen. Code, § 211), a 1987 conviction of intimidation of witnesses (*id.*, § 136.1), a 1993 conviction of making criminal threats (*id.*, § 422), and a 1994 conviction of voluntary manslaughter (*id.*, § 192, subd. (a)).

“By 1989, [Sanchez] had been paroled and committed a hit and run. This constituted a violation of parole and he went back to prison. By early 1990, he was again free and again violated parole, resulting in a return to prison. He was paroled again on August 11, 1990, and the next day was arrested for assault with a deadly weapon. This resulted in his return to prison for a parole violation. In 1992, he was arrested for robbery. Instead of proceeding with the charge, the authorities had him returned to prison for a parole violation.

“In 1993, [Sanchez] was convicted of making the terrorist threat, and receiving stolen property. He was placed on probation, which included the condition that he not possess firearms. Later in the year, he shot someone to death and was convicted of voluntary manslaughter. He went to prison for the homicide and the two earlier 1993 convictions. By February of 1999, he had been paroled, violated parole, and gone back to prison. By December of 1999, [Sanchez] had again been paroled and arrested for misdemeanor possession of marijuana. The current crimes occurred in September of 2000.” (*People v. Sanchez, supra*, B149912.)

We concluded there was “nothing insignificant about the current convictions. [Sanchez] is now a convicted drug dealer who has in the past tried to pervert the justice system by intimidating a witness. He has separately threatened someone with violence and has shot someone to death. He has committed property crimes and violent crimes. Neither probation nor parole has had the slightest effect on him. . . . It appears that he has never been free of custody for more than a few weeks or months. Indeed, since 1986 [Sanchez] has effectively been serving a life sentence, interrupted by short periods of freedom punctuated by

new crimes. [¶] [Sanchez] offers nothing concrete to support mercy. He has amply demonstrated that nothing short of removal from the community will stop him from committing crimes. . . .” (*People v. Sanchez, supra*, B149912.)

The People also cited Sanchez’s conduct in prison as a basis for finding him unsuitable for resentencing. They noted that as recently as January 11, 2013, he had committed a rule violation, his CDCR classification score³ had been reduced only minimally—from 71 to 65— since entering prison, and he had been housed in an Administrative Segregation Unit due to violent and disruptive behavior.

In a reply filed February 18, 2015, Sanchez’s counsel noted that Sanchez had been participating in Alcoholics Anonymous (AA) for six months in 2002 and Narcotics Anonymous (NA) for the past year. Additionally, he had a job waiting for him with his sister, who owned a horse ranch in Hemet. Counsel stated that Sanchez “claims he is ready to change his life. He is 48 years old and has 3 grandchildren. He has never seen them.” Counsel also received permission to withdraw as counsel due to his workload. He had contacted another attorney who agreed to represent Sanchez.

New counsel filed an amended reply on August 18, 2016. Counsel argued that the People failed to establish that Sanchez

³ An inmate’s CDCR (California Department of Corrections and Rehabilitation) classification score reflects the inmate’s security requirements and plays a significant role in determining where the inmate will be housed. The lower the score, the less security control needed. Classification scores are reviewed annually. (*In re Jenkins* (2010) 50 Cal.4th 1167, 1173-1174; see Cal. Code Regs., tit. 15, § 3375 et seq.)

currently posed an unreasonable risk of danger to public safety. While Sanchez's most recent classification score was 81 due to rules violations, counsel argued that "only three of the rules violations involve[d] physical altercations with another inmate (2007, 2011, 2014), and [Sanchez] contends that he acknowledged his wrongdoing at the violation hearing for each." Sanchez had expressed the intent "to maintain his life of sobriety by attending support groups if resentenced and released from custody." In addition to his participation in AA and NA, in 2014 Sanchez received certificates for participation in reading and literacy programs.

On January 19, 2017, counsel filed a violence risk assessment by defense expert Carl E. Osborn, Ph.D., J.D., a forensic psychologist (Pen. Code, § 1170.126, subd. (f)). After examining all of the relevant data, Dr. Osborn concluded Sanchez "presents a high to very high risk of recidivism and re-arrest. . . . On the more specific question of violence risk, the outcomes of the standardized violence risk measures, the recentness of some of the violence documented in his prison file and his admission during [his] examination of continuing use of Pruno (inmate-manufactured alcohol) and recent methamphetamine use all serve to increase his risk above the baseline established by relevant static factors. The fact that he is now 49 years old, however, mitigates his violence risk He also has substantial family and community resources at his disposal should he be granted parole, further mitigating his risk of recidivism." (Fn. omitted.)

III. The Hearing

Dr. Osborn and Sanchez were the only witnesses who testified at the June 8, 2017 hearing on the petition. Dr. Osborn noted that Sanchez was cooperative, polite and respectful during the testing and interview process. The doctor explained his assessment that Sanchez was at high risk for future violence: “Mr. Sanchez, while he has family support, has not been able to maintain sobriety, and he doesn’t seem to have engaged in the rehabilitation process although he has been in prison since the year 2000. Things that would moderate the static risk factors that are based on his prior behavior are all pointing in a negative direction.”

The doctor noted Sanchez’s candor about his struggles with “maintaining sobriety within the prison and also has write-ups for Pruno manufacturing. He mentioned to me, during the conversation, that he had used methamphetamine relatively recently within the prison. And part of the additional documents I received recently indicate that he failed a urinalysis drug test with metabolite morphine.” The test results showed Sanchez had “abused some form of opiate within 2 or 3 days of my examinations of him last year. So yes, the sobriety is a big issue.”

Dr. Osborn acknowledged that a transitional program willing to take Sanchez might help him succeed outside prison. Additionally, Sanchez’s sister’s offer of a place to live and a job was “the most positive thing that came out of my examination,” as it would “keep Mr. Sanchez away from the influences that have caused him so much trouble in the past.”

Sanchez testified he would not pose an unreasonable risk to public safety if resentenced: “My plans would be just to work and stay with my family and stay out of trouble and that’s it.” He

would stay out of trouble “[b]ecause I’m staying away from the gangs and all that stuff.” He acknowledged that he had not formally disassociated himself from the gangs while in prison, but only because he “just never thought of ever doing that.” However he had not “h[u]ng out” with gang members in prison for over five years. The last thing he had done to associate with the gang was to beat someone up about six years earlier.

Sanchez said he was now “willing to do whatever it takes” to live successfully outside prison. He would try his best to abstain from drug use, “go to NA and AA, whatever I have to do.” He had signed up to do that in prison nine months earlier, when he transferred to a new prison, but had not done so because there was a long waiting list.

Sanchez acknowledged he had not consistently participated in workshops or educational classes in prison. Nor had he worked on his sobriety in a consistent way. He also agreed with reports from his supervisors that he did not put a lot of effort into his work assignments. He explained, “You don’t get paid. That’s one reason why.”

IV. The Trial Court’s Ruling

In its detailed written ruling, the trial court reviewed the applicable law and the evidence presented. It then turned to the People’s claim that Sanchez’s “criminal history, disciplinary history, lack of rehabilitative programming, and Dr. Osborn’s assessment . . . support their position that [Sanchez] poses an unreasonable risk of danger to public safety and is therefore unsuitable for resentencing.”

The court found “the multiplicity of [Sanchez’s] prior convictions and his inability to refrain from re-offending while in

the community constitute present and relevant concerns only if other evidence in the record provides a nexus between [his] criminal past and current dangerousness. (See *In re Lawrence* (2008) 44 Cal.4th 1181, 1227.)” The court found Sanchez’s “ongoing disciplinary history, substance abuse, lack of rehabilitative programming, and unsupportive psychological evaluation provide such a nexus.”

In particular, Sanchez “has accumulated a total of 19 RVRs^[4] while incarcerated. These RVRs have been fairly consistent from 2003 to the present. Some RVRs, particularly those related to Pruno, the court gives little weight. However, [Sanchez’s] inability to stay discipline-free while seeking resentencing is troubling.” Since filing his petition in 2013, Sanchez accumulated six RVRs, including one for use of a controlled substance just prior to his interview with Dr. Osborn, when Sanchez “was well aware that his resentencing proceedings were underway.”

The court also emphasized Sanchez’s lack of rehabilitative programming. He only briefly participated in AA and NA and “acknowledged to Dr. Osborn[that] he could not commit to sobriety despite his participation in these programs. . . . His continued substance abuse in spite of this programming undermines its probative value. [Sanchez] also has not participated in any programming specific to former gang members, and outright refused to consider debriefing from the

⁴ RVRs—Rules Violation Reports—are issued for serious rule violations. (Cal. Code Regs., tit. 15, §§ 3312, subd. (a)(3), 3315, subd. (a); *In re Martinez* (2012) 210 Cal.App.4th 800, 805.)

gang, leading Dr. Osborn to conclude that gang membership was a central component of [Sanchez's] identity."

On the positive side, the trial court found Sanchez's post-release plans to be "appropriate and realistic." The court also observed that Sanchez was then "50 years old. As Dr. Osborn notes, his advanced age would typically suggest that he no longer poses an unreasonable risk of danger to public safety Although [Sanchez's] RVR history has continued despite his advanced age, his record since 2011 includes no further incidents of violence, suggesting at least some reduction in criminality."

However, Sanchez's classification score of 81, with the lowest possible score for an inmate serving a life term being 19, is not a positive factor. Although his score had fluctuated over time, it had not shown "any appreciable long-term reduction." Sanchez's "classification score thus tips in favor of unsuitability. However, the court acknowledge[d] that [Sanchez's] score [was] not elevated to the extremes often seen in other third strike resentencing cases, and weigh[ed] the factor accordingly."

In weighing the evidence, the court found the evidence favoring suitability was "outweighed, and in many instances substantially undermined, by the remainder of the record." In particular, Sanchez's continued drug abuse despite his participation in AA and NA showed that he had "not truly addressed his substance abuse problem." Additionally, his continued RVRs after filing his resentencing petition demonstrated unsuitability for release. "The court also gave weight to the testimony of Dr. Osborn. Nearly every statistical measure administered by the doctor showed [Sanchez] was a poor parole risk."

The court concluded: “Overall, the sum of [Sanchez’s] recent RVRs, recent substance abuse, and unsupportive psychological assessment combine to outweigh the positive factors in the record. Although the record demonstrates that resources would be available to [Sanchez] upon his release, those resources are only as probative as [Sanchez’s] willingness and ability to abide by the law upon his release. The evidence before the court undermines confidence in that willingness and ability.” The court therefore denied Sanchez’s petition.

DISCUSSION

I. Applicable Law and Standard of Review

Proposition 36 provides that when a defendant’s current offense is not a serious or violent felony and the defendant is not otherwise disqualified from relief, the defendant will be sentenced as a second strike offender rather than receiving an indeterminate life sentence as a third strike offender. (*People v. Valencia* (2017) 3 Cal.5th 347, 353-354.) Under Proposition 36, “[a]n inmate who is serving a third strike sentence that would have yielded a second strike sentence under Proposition 36’s new sentencing rules ‘shall be resentenced’ as [a] second strike offender ‘unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.126, subd. (f).) [¶] In exercising its discretion to deny resentencing, the court has broad discretion to consider: (1) the inmate’s ‘criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes’; (2) his or her ‘disciplinary record and

record of rehabilitation while incarcerated’; and (3) ‘[a]ny other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.’ (§ 1170.126, subd. (g)(1)-(3).)” (*Valencia, supra*, at p. 354.)

We review the denial of a Proposition 36 petition on the ground of future dangerousness under the abuse of discretion standard. (See § 1170.126, subd. (f); *People v. Williams* (2018) 19 Cal.App.5th 1057, 1062.) Under this standard, we consider whether the ruling “exceeds the bounds of reason or is arbitrary, whimsical or capricious. [Citations.] This standard involves abundant deference to the trial court’s rulings.” (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018; accord, *Williams, supra*, at p. 1062.)

However, “‘[t]he facts upon which the court’s finding of unreasonable risk is based must be proven by the People by a preponderance of the evidence . . . and are themselves subject to [appellate] review for substantial evidence.’ [Citations.]” (*People v. Frierson* (2017) 4 Cal.5th 225, 239.) In reviewing the trial court’s factual findings, we view the record in the light most favorable to those findings “‘to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which’ ” the court could have made those findings. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.) We presume in support of the findings every fact reasonably inferable from the evidence. (*Ibid.*) “‘If the circumstances reasonably justify the [trial court’s] findings, reversal of [its decision] is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs

evidence nor reevaluates a witness's credibility.' [Citation.]"
(*Ibid.*)

II. Substantial Evidence Supports the Trial Court's Finding of Unsuitability

Sanchez contends that there is no substantial evidence to support the trial court's finding that he would pose an unreasonable risk of danger to public safety if he were resentenced. His argument in support of this contention amounts to nothing more than a request that we reweigh the evidence and find that the positive evidence outweighs the negative. This we cannot do. (*People v. Covarrubias, supra*, 1 Cal.5th at p. 890.)

For example, Sanchez points out that his criminal history since 1994 has not involved crimes of violence. Thus, he claims, "[t]here is nothing in his current criminal history to indicate that there is, at present, an unreasonable risk that he will endanger public safety, if released."

Sanchez's criminal history is but one factor to be considered in assessing current dangerousness. " "[T]he relevant inquiry is whether [a petitioner's prior criminal and/or disciplinary history], when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years [later]. This inquiry is . . . an individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time or the attendant changes in the [petitioner's] psychological or mental attitude. [Citation.]" [Citation.]" [Citation.]" (*People v. Buford* (2016) 4 Cal.App.5th 886, 914, quoting *In re Shaputis* (2008) 44 Cal.4th 1241, 1254-1255.) Here, the trial court found that Sanchez's "ongoing disciplinary history, substance abuse,

lack of rehabilitative programming, and unsupportive psychological evaluation provide . . . a nexus” between his prior criminal conduct and a finding of current dangerousness. Dr. Osborn noted that while Sanchez’s age mitigated his violence risk, “the recentness of some of the violence documented in his prison file and his admission during [his] examination of continuing use of Pruno . . . and recent methamphetamine use all serve to increase his risk above the baseline established by relevant static factors.” Thus, despite the lack of convictions for violent crimes after 1994, there is substantial evidence of a continued risk to public safety were Sanchez to be resentenced.

Sanchez also emphasizes the “dearth of evidence that he was presently prepared to commit violent crimes for the gang” of which he had been a member. Sanchez’s gang membership or ties was not a factor that weighed heavily in the court’s determination, however. Rather, its focus was on Sanchez’s “recent RVRs, recent substance abuse, and unsupportive psychological assessment,” which suggested a lack of “willingness and ability to abide by the law upon his release.”

Sanchez points out that the determination “whether resentencing a defendant poses an unreasonable risk of danger to society is necessarily a forward-looking inquiry.” (*People v. Williams, supra*, 19 Cal.App.5th at p. 1063.) However, the trial court did not merely rely on the historical factors of Sanchez’s criminal and disciplinary history. It relied on his continued drug and alcohol abuse, even after he filed his petition for recall of sentence and right before his interview with the defense expert. It relied on his lack of commitment to rehabilitative programming. It found that Sanchez’s continued RVRs after filing his resentencing petition demonstrated unsuitability for

release. The record supports the trial court's conclusion that Sanchez's inability to control his behavior after filing his petition, when looking forward to the possibility of resentencing and release, demonstrates a lack of commitment to change and a continued risk of danger to public safety. (See *People v. Garcia* (2014) 230 Cal.App.4th 763, 769.)

We conclude there is substantial evidence supporting the trial court's finding of current dangerousness. The court therefore did not abuse its discretion in denying Sanchez's Proposition 36 petition. (*People v. Frierson, supra*, 4 Cal.5th at p. 239; *People v. Williams, supra*, 19 Cal.App.5th at p. 1062.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.